

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

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Attorneys for Barry Sharer, Trustee

In re: Benjey and Linda M. Blumberg

Barry Sharer, Trustee

Plaintiff(s)

vs.

Benjey M. Blumberg

Equifirst Corporation;

Sterling Bank;

Bank of America N.A, successor to Fleet Bank;

and "John Doe" a Fictitious Name

Defendant(s)

Chapter 7

Case No. 04-32654/JHW

Adversary No. 05-2781

STIPULATION OF SETTLEMENT

Plaintiff, Barry Sharer, Trustee [called herein "**Trustee**"], and Defendant(s), Equifirst Corporation [**"Equifirst"**] and Debtors Benjey and Linda Blumberg, [called herein "**Debtors**"], individually or by the undersigned attorneys or authorized agents, agree to the following terms of settlement:

1. Equifirst and Debtors shall together pay to the Trustee by no later than May 8, 2006, the sum of Seventy Two Thousand Dollars (\$72,000.00). [**"the Settlement Payment"**]. Of this amount, \$70,000.00 shall be paid on behalf of Equifirst, by its title insurer, Fidelity National Title, and \$2000.00 shall be paid by the Debtors. If this settlement is not then

approved, these monies shall be held in escrow by the Trustee pending court approval of this Agreement, and if necessary, any of the Side Agreements referenced in paragraph 5 below.

2. Pursuant to Code section 726, the Trustee shall use and apply the Settlement Payment to pay and satisfy all administrative expense claims in the above Estate, plus payment in full of all allowed claims, plus post-petition interest on such claims calculated at 2.2% per annum to the estimated date of disbursement. This total is called **“the Full Administration Amount”**.
3. Equifirst shall have and be allowed a Surplus Claim, pursuant to Code section 726(a)(6) for any amounts left after distribution of the Full Administration Amount. The Debtors waive any right to any claim against any such surplus.
4. The Debtors and Equifirst reserve all rights to object to allowance of any fees or expenses of the Trustee on the basis of reasonableness. However, no such objection to any trustee compensation may be based on any claim or argument that Code section 330 applies to such compensation. Instead, the parties agree and intend that the Trustee compensation be treated as a commission.
5. This settlement and the Settlement Amount are conditioned on and predicated on each of the following:
 - a. Sterling Bank and Stan and Cora Klett shall each have executed and filed a full and unconditional withdrawal and waiver of their respective unsecured claims.

Separate arrangements have been made by and between each of them and the

Debtors .

- b. Equifirst shall be entitled to retain its existing mortgage on the debtor's residence, pursuant to separate agreements between it and the Debtor.
 - c. Each of the separate arrangements between the Debtors and Equifirst, Sterling Bank, or the Kletts [collectively called herein "**the Side Agreements**"] shall be finalized and approved within 30 days of execution of this Agreement. The Debtors shall bear all costs and expense of negotiating and obtaining court approval of such Side Agreements. However, the Trustee shall not oppose approval of any such Side Agreement if not inconsistent with this Stipulation.
 - d. Bank of America as successor to Fleet Bank, shall have an allowed unsecured claim. This is provided for in a separate order of the Court issued on the Trustee's Motion to Expunge etc Claims.
6. **Tax Matters.** For all applicable tax purposes, the monies paid to Trustee are and shall be treated as consideration for the sale and transfer to Trustee of the interest of the Debtors in their residence at 3 Oak Terrace, Merchantville, New Jersey.. Debtors each state, warrant and represent that for at least 2 of the past 5 years, the Debtors occupied the Residence as their personal residence and have never declared or sought deduction of any part of the property as a business location, for tax purposes. Debtors understand that the Trustee will rely on this statement in filing tax returns for the Bankruptcy Estate treating the payment of money under this Agreement as a payment for the sale, transfer and release of the Debtor's interest in the Residence, and will claim, in such return, any

exclusions or exemptions that are or were available to the Debtor as of the Petition filing date. Debtors agree to this tax treatment, and any returns or filing they may make with any taxing authorities shall, insofar as necessary, reflect this.

7. Contemporaneously with execution of this Settlement Agreement and Mutual Release, all parties will execute a Stipulation discontinuing the above-captioned pending adversary proceeding with prejudice. Upon approval of the settlement by the Bankruptcy Court, and payment of the Settlement Amount to the Trustee in good funds, and satisfaction of the foregoing conditions, plaintiff's counsel will promptly file the Stipulation with the Court.
8. In consideration of the arrangements set forth in this Agreement and conditional upon full performance under this Agreement by Equifirst, the Trustee hereby releases and forever discharges Equifirst and the Debtors from all suits, actions, debts, claims or demands, whether legal or equitable, known or unknown, matured or unmatured he may have against any of them arising from the issues or matters which are the subject of the Complaint and any responsive pleadings. This includes, without limitation, all claims or causes of action to revoke the Debtors' discharge, or to seek against Equifirst, avoidance of its mortgage lien or recovery of damages or costs. This does not apply to any claims or any rights the Trustee may have under this Agreement or for breach or enforcement thereof.
9. In consideration of the arrangements set forth in this Agreement and conditional upon full performance under this Agreement by the Trustee, the Debtors and Equifirst hereby releases and forever discharge the Trustee and any of his professionals, agents or

representatives from all suits, actions, debts, claims or demands, whether legal or equitable, known or unknown, matured or unmatured they or any of them may have against any of those release parties arising from anything which has happened to date.

This does not apply to any claims or any rights any party may have under this Agreement or for breach or enforcement thereof..

10. Except as otherwise set forth in this agreement, all parties shall bear the expense of their own attorneys fees or other costs connected with the Action.
11. **Default, Remedies and Enforcement.** Any party hereto shall be in breach and default of its obligations if, ten days after receiving written notice of failure to perform an obligation due at the time of notice, that party fails to make any payment or perform any other act that party is required to perform by this agreement. Such notice may be made by personal delivery, facsimile transmission or certified mail to the party and the party's attorney signing below, at the last known address for each. Upon default, all future installments of payment, and all obligations of future performance shall become immediately due. In any motion, suit or other proceeding to enforce this agreement, a party found to have breached this agreement shall be liable to the injured party seeking enforcement for reasonable attorneys fees and court costs expended to obtain enforcement, and interest at 12% per annum on amounts unpaid from the date of default, in addition to any other legal or equitable remedies to which the enforcing party may be entitled.
12. This Settlement Agreement and Mutual Release, as well as performance of the promises made herein effect the settlement of contested claims and litigation. Except as

specifically stated in the next paragraph, neither the execution of this agreement nor performance of any the promises made herein shall be construed as an admission by any party or any other person. Each party hereto denies any such liability. The parties agree that the releases, promises and actual undertakings made in this settlement are full, reasonable, fair and adequate consideration for each other, and are intended as a contemporaneous exchange of value.

13. Each party hereto acknowledges, warrants and represents to all other parties that such party (a) has been represented by independent legal counsel of his/her own choice throughout all negotiations that preceded the execution of this agreement; (b) has executed this agreement with the consent and/or the advice of that independent legal counsel; (c) has read this agreement and fully understands its terms; (d) has executed this agreement willingly and freely.
14. Each person signing below as attorney, officer, partner or other agent of any party personally warrants and represents that he/she is fully authorized by the party represented to enter into this settlement on the terms stated herein, as that party's legal act.
15. This settlement is binding on each of the parties thereto and all persons who succeed to any of their respective obligations, rights or interests in it.
16. This settlement is subject to approval by the United States Bankruptcy Court for the District of New Jersey in the above captioned matter, on proper notice to creditors pursuant to F.R.B.P. 2002. Plaintiff shall submit this settlement to the court for noticing as soon as practicable after Plaintiff receives a fully executed copy of this stipulation. The

settlement shall be considered "finally approved" only upon issuance by the Clerk of a Certificate of No Objections after notice as provided for in this paragraph or, if an Order is issued approving the settlement, upon expiration of the time for appeal under F.R.B.P. 8002 from such order.

17. **Entirety of Agreement:** Except for the separate agreements and arrangements between the Debtors and Equifirst or others, to which the Trustee is not a party, this document contains the entire Agreement between the parties, and supersedes all previous agreements, statements or claims made between them. There are no other promises or statements relied upon by any party regarding any subject referred to in this Agreement which are not contained herein. Any modifications of this Agreement must be in writing and signed by all parties to be enforceable.
18. To the extent state law is applicable to this agreement, the laws of the State of New Jersey shall apply to the interpretation, application or enforcement of this Agreement, without regard to conflicts of law principles.
19. All matters relating to interpretation, application or enforcement of this agreement shall be decided by the U.S. Bankruptcy Court in the above-captioned matter, which court shall have exclusive jurisdiction as a core matter. All parties hereto agree to submit to

jurisdiction of that court.

20. This settlement agreement may be executed in counterparts without affecting its validity and each such signature shall be deemed a signature agreeing to all terms and conditions stated herein. The undersigned counsel for Barry Sharer, Trustee may rely on a faxed copy or photocopy of an original signature, if mailed or faxed, for purposes of arranging notice of this settlement in the Bankruptcy Court, but all parties shall forward to the undersigned counsel for Barry Sharer, Trustee the original signatures as soon as practicable.

Neuner and Ventura LLP
Attorneys for Barry Sharer, Trustee

By: /s/ Steven R. Neuner, Esq. Dated: April 24, 2006
Steven R. Neuner, Esq.

Cooper Levenson April Niedelman & Wagenheim PA
Attorneys for Equifirst Corporation and Fidelity National Title Insurance Company

By: /s/ Alan R. Angelo, Esquire, Dated: April 11, 2006
Alan R. Angelo, Esquire

Attorneys for Debtors Benjey and Linda Blumberg

By: /s/ David Kasen Esq. Dated: April 21, 2006
David Kasen Esq.

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